

Message Text

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DRAFTED BY L/SMSCHWEBEL;L/C:FKWIATEK

APPROVED BY P-JOSEPH J. SISCO

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L-M.LEIGH

NEA/EGY-HFMATTHEWS

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TO AMEMBASSY CAIRO PRIORITY

C O N F I D E N T I A L STATE 168774

E.O. 11652: GDS

TAGS:EFIN, CPRS, PFOR, LG

SUBJECT:U.S. CLAIMS AGAINST EGYPT

REFS: (A) CAIRO 06924; (B) CAIRO 05887; (C) CAIRO 06817;

(D) STATE 145618

1. OUR REACTIONS TO POSSIBILITIES RAISED IN RBFTEL (A)
FOLLOW.

2. IN VALUATION OF CLAIMS OF U.S. NATIONALS AGAINST
EGYPT, WE BELIEVE THAT APPLICABLE EGYPTIAN LAW SHOULD BE
TAKEN INTO ACCOUNT. HOWEVER, U.S. NATIONALS ARE ENTITLED
TO FULL COMPENSATION IN ACCORDANCE WITH INTERNATIONAL
LAW. FULL COMPENSATION IS TO BE DETERMINED IN ACCORDANCE
WITH CUSTOMARY CRITERIA, SUCH AS FULL MARKET VALUE, GOING
CONCERN VALUE, REPLACEMENT VALUE AND BOOK VALUE. (WE ARE
REPEATING TO CAIRO REFTL (D), A RECENT EXPOSITION OF
U.S. POLICY ON EXPROPRIATION VALUATION ON WHICH YOU MAY
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DRAW AS APPROPRIATE.) TO THE EXTENT THAT APPLICABLE

EGYPTIAN LAW MEETS THE REQUIREMENTS OF INTERNATIONAL LAW, IT FURNISHES A SATISFACTORY BASIS FOR VALUATION; BUT IT IS INTERNATIONAL LAW, AND NOT THE LAW OF EITHER EGYPT OR THE U.S., WHICH IS DISPOSITIVE.

3. WE CANNOT ACCEPT A SETTLEMENT, EITHER INDIVIDUAL OR GLOBAL, WHICH WOULD PUBLICLY SPECIFY 65 PERCENT AND SECRETLY PROVIDE THAT THE REMAINING 35 PERCENT WILL BE MET, FOR MORE THAN ONE REASON, INCLUDING CONSIDERATION THAT USG ALWAYS PUBLISHES ALL OF ITS CLAIMS AGREEMENTS IN FULL. YOU SHOULD SO INDICATE TO GOE WHILE EXPRESSING OUR APPRECIATION OF ITS WILLINGNESS TO AFFORD FULL COMPENSATION. FYI: IN THIS REGARD, WE LACK TEXTS OF EGYPTIAN CLAIMS SETTLEMENTS SPECIFYING 65 PERCENT AND MFN AND WOULD APPRECIATE YOUR CABLING THEM TO US END FYI.

4. IF GOE STRONGLY PREFERS A CASE-BY-CASE DISPOSITION OF EACH CLAIM, THE USG IS PREPARED TO JOIN IT IN SUCH A PROCESS. IN THAT EVENT, WE SUGGEST A MIXED CLAIMS COMMISSION BE CONSTITUTED, COMPOSED OF ONE EGYPTIAN AND ONE U.S. ARBITRATOR AND AN UMPIRE OF A THIRD NATIONALITY TO BE AGREED UPON BY GOE AND USG JOINTLY. IT WOULD SIT IN CAIRO AND DEAL WITH THE MERITS AND VALUATION OF EACH CLAIM IN ACCORDANCE WITH INTERNATIONAL LAW. WE WOULD NOT OBJECT TO SUCH A PROCESS TAKING ONE OR TWO YEARS. WE WOULD PROPOSE IN THIS EVENT THAT ALL CLAIMS, WHATEVER THEIR BASIS, APART FROM CLAIMS OF THE USG ITSELF, BE SUBMITTED TO SUCH A TRIBUNAL.

5. YOU SHOULD ALSO STATE, HOWEVER, THAT, WHILE THE USG IS ALTOGETHER WILLING TO ENGAGE IN A CASE-BY-CASE DISPOSITION OF CLAIMS IN THE FOREGOING FASHION, IT SEES VIRTUE IN DISPOSING EXPEDITIOUSLY OF THE WHOLE PROBLEM BY MEANS OF A LUMP SUM AGREEMENT, PROVIDED THAT THAT SUM IS ADEQUATE. ADVANTAGE OF SUCH A COURSE IS NOT ONLY ITS EXPEDITIOUSNESS BUT ABILITY TO OBSCURE IN WHAT MEASURE CLAIMS ARE MET (THUS AMELIORATING ANY EGYPTIAN MFN PROBLEM). YOU SHOULD SAY THAT, IF GOE IS PREPARED TO NEGOTIATE A LUMP SUM AGREEMENT, USG WISHES TO PROPOSE A SUM WHICH EQUALS THE TOTAL OF ALL

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CLAIMS INCLUDED IN USG CLAIMS BOOK, EXCEPT FOR THE AMERICAN MISSIONS AND AFRICAN GLEN CASES WHICH, TOGETHER WITH U.S. GOVERNMENTAL CLAIMS, WILL BE REMITTED FOR APPROPRIATE NEGOTIATION WITH FOREIGN OFFICE. FYI: HUANG IS AUTHORIZED, HOWEVER TO DELETE FROM THIS TOTAL ANY CLAIMS NOT SPECIFIED ABOVE WHICH HE IS CONVINCED ON BASIS OF LATEST EXCHANGES ARE DEFINITELY UNFOUNDED. CLAIMS WHICH IN OUR VIEW ARE WELL BASED, OR

COLORABLE, EVEN IF CONTESTED BY EGYPT, SUCH AS HABACHY CLAIMS, SHOULD OF COURSE BE MAINTAINED IN FULL. END FYI.

TO THAT SUM, IT SHOULD BE NOTED THAT USG WOULD WISH INTEREST TO BE ADDED. SUCH A PROPOSAL SHOULD BE COUCHED IN A MANNER WHICH MAKES CLEAR THAT, WHILE USG VIEWS THIS TOTAL AS JUSTIFIED, IT IS NOT USG'S LAST WORD.

6. IN SHORT, WE SHOULD GIVE EGYPTIANS THE CHOICE OF MOVING NOW TO NEGOTIATION OF A LUMP SUM AGREEMENT OR, ALTERNATIVELY, DISPOSITION OF INDIVIDUAL CLAIMS IN ACCORDANCE WITH INTERNATIONAL LAW AND THE PROCESSES OF INTERNATIONAL ARBITRATION. EGYPTIAN PROPOSALS SET OUT IN REFTEL (A) NEED NOT DIRECTLY BE DESCRIBED AS UN-ACCEPTABLE; RATHER, USDEL SHOULD ADVANCE THE FOREGOING ALTERNATIVES FOR THE CONSIDERATION OF GOE.

7. RE REFTEL (C), WE DO NOT THINK IT DESIRABLE TO ENGAGE IN A JOINT DRAFTING EXERCISE UNTIL AGREEMENT ON THE BROAD MODALITIES OR SUBSTANCE OF A SETTLEMENT HAVE BEEN REACHED. KISSINGER

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